

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kotzin)
For: Apparatus for Wireless Device to)
Alter Performance of Wireless)
Communication Link)
Serial No.: 09/614,161)
Filed: July 11, 2000)
Examiner: Contee, J.)
Art Unit: 2681)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

CERTIFICATE OF TRANSMISSION

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James C. Ly -

April 25, 2005

(Date)

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**TRANSMITTAL OF APPEAL BRIEF, and
Petition Requesting a One Month Extension**

In accordance with 37 CFR §41.31, applicants hereby appeal to the Board of
Patent Appeals and Interferences from the last decision of the Examiner.

The enclosed brief is being filed in furtherance of the Notice of Appeal, faxed on
January 24, 2005. The present filing date of April 25, 2005, for filing the Appeal Brief is within
the permissible two month term for filing the brief, extended an additional one month. It is
noted, that April 25, 2005, is the first business day after April 24, 2005, which was a Sunday.

In connection with filing the appeal brief, a total fee in the amount of \$620 is
believed to be due including the \$500 fee associated with filing an appeal brief, as provided by
C.F.R. §41.20(b)(2), and a \$120 fee associated with requesting a one month extension, as

- 1 -

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provided by C.F.R. §1.17(a)(1). The undersigned authorizes the Commissioner and respectfully requests that the fees be charged to deposit account 50-2117 of Motorola, Inc. The Commissioner is further authorized to charge any additional fees deemed to be necessary in connection with the proper handling and consideration of the enclosed appeal brief in support of the appeal from the Examiner's final rejection, as well as any fees associated with any underpayments, and/or credit any overpayments to deposit account 50-2117 of Motorola, Inc.

Respectfully submitted,

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APPELLANTS' BRIEF

This brief is in furtherance of the NOTICE OF APPEAL, mailed on January 24, 2005.

Any fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS

- 1 -

- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII ARGUMENT
 - A. Rejections under 35 U.S.C. 102
 - B. Rejections under 35 U.S.C. 103
- VIII CLAIMS APPENDIX
- XI EVIDENCE APPENDIX (not applicable)
- X RELATED PROCEEDINGS APPENDIX (not applicable)

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Motorola, Inc., a Delaware corporation.

II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

III. STATUS OF CLAIMS

A. Status of all claims in the proceeding

- 1. Claims rejected: 30-32 and 37-43
- 2. Claims allowed: none
- 3. Claims withdrawn: none
- 4. Claims objected to: none
- 5. Claims cancelled: 1-29 and 33-36

B. Identification of claims being appealed

The claims on appeal are: 30-32 and 37-43

IV. STATUS OF AMENDMENTS

No Amendments have been filed subsequent to the most recent final rejection, dated July 22, 2004.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention pertains to a cellular telephone (100), which includes a battery (116) detachably connectable to the cellular telephone to supply the cellular telephone with power, and a remote power source (144) detachably connectable to the cellular telephone (100). The cellular telephone is adapted to sense when the remote power source (144) is coupled to the cellular telephone (page 8, lines 31-33). Responsive to sensing the remote power source (144) coupled to the cellular telephone (100), the cellular telephone (100) alters a cellular telephone capability (page 9, lines 1-13), whereby the cellular telephone (100), which communicates data at the first data rate, while transmitting, over an air interface independently of the remote power source (144), is capable of communicating at a higher data rate, while transmitting, only while the remote power source (144) is coupled to the cellular telephone (100) (page 9, lines 4-7).

The invention further pertains to a communication assembly, which includes a portable wireless communication device (100) including a transceiver (108) for communicating data over a wireless communication link and control circuitry (112) coupled to the transceiver (108). The control circuitry (112) provides digital data processing to the transceiver (108), which is sufficient to enable the transceiver (108) to communicate data via the wireless communication link at a first data rate (page 4, lines 12-14), while transmitting. The communication assembly further includes an apparatus (104) detachably coupled to the portable wireless communication device (100), the apparatus including digital circuitry (136, 140) to couple to the control circuitry (112) via a data bus (142), the digital circuitry (136, 140) interoperable with the control circuitry (112) to provide additional digital data processing support (page 5, lines 5-7) for the control circuitry (112) via the data bus (142) when the apparatus (104) is coupled to the portable wireless device (100). The digital circuitry (136, 140) operates with the control circuitry (112) to provide digital data processing to the transceiver (108) sufficient to enable the transceiver (108) to

communicate data via the wireless communication link at a second data rate, while transmitting, when the apparatus (104) is connected to the communication device (100), the second data rate being higher than the first data rate (page 3, lines 12-15).

A corresponding method for controlling a transceiver (108) in a portable wireless communication device (100) is similarly provided, where the data processing of information in first processing circuitry (112) enables data communication via the transceiver (108) at a first data rate, while transmitting, when an external apparatus (104) is not connected to the wireless communication device (100). Cooperative data processing in both the first processing circuitry (112) and a second processing circuitry (136), enables wireless data communication via the transceiver (108) at a second rate, which is higher than the first data rate (page 3, lines 12-15), when the external apparatus (104) which includes the second processing circuitry (136) is coupled to the communication device (100).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 30-32, 37, 38 and 40 have been improperly rejected under 35 U.S.C. 102(e) as being anticipated by Vannatta et al. (US Patent No. 5,924,044).
2. Whether claims 41-43 have been improperly rejected under 35 U.S.C. 102(e) as being anticipated by Baker et al. (US Patent No. 6,317,597).
3. Whether claims 39 has been improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Vannatta et al. (US Patent No. 5,924,044) in view of Lee et al. (US Patent No. 5,873,045).

VII. ARGUMENTS

A. Rejections under 35 U.S.C. 102

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The

identical invention must be shown in as complete detail as is contained in the ... claim.

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

1. Whether claims 30-32, 37, 38 and 40 have been improperly rejected under 35 U.S.C. 102(e) as being anticipated by Vannatta et al. (US Patent No. 5,924,044).

The Examiner has rejected claims 30-32, 37, 38 and 40 under 35 U.S.C. 102(b) as being anticipated by Vannatta et al. (US Patent No. 5,924,044). However contrary to the Examiner's assertions, Vannatta et al., '618, fails to make known each and every element as set forth in the claims. More specifically, Vannatta et al., minimally fails to make known or obvious

"alter a cellular telephone capability responsive to sensing the remote power source coupled to the cellular telephone, whereby the cellular telephone, which communicates data at the first data rate, while transmitting, over an air interface independently of the remote power source, is capable of communicating at a higher data rate, while transmitting, only while the remote power source is coupled"

In rejecting the claims the Examiner has focused on the specific language in the reference without apparently taking into account the overall context. While, Vannatta et al., '044, provides for an attached module which allows an alternative transmission rate, when the reference is reviewed in its entirety, the reference can not be said to make known the claimed context of the present application, which refers to a "rate, while transmitting". Alternatively, the at least one embodiment referenced by the Examiner enables the device to transmit for a greater portion of the assigned transmission slot (FIG. 8 vs FIG. 9). In this instance, the data throughput is enhanced by an increased duration (i.e. proportion) of transmission time relative to the duration of the assigned transmission slot.

In the present application, the multiple rates refer to the amount of data transmitted for the same transmission duration. For support, the applicant would respectfully direct the Examiner's attention to page 5, lines 9-10, of the specification. More specifically the exemplary differing data rates are identified in Kbps or Kilobits per second. In an attempt to make the same more clear, the claims refer to "data rate, while transmitting", which is meant to

be distinguishable from the instance where an aggregate or average data rate might vary, which includes periods of time, when a transceiver is transmitting, and periods of time, when a transceiver is not transmitting, for example, in response to the relative proportion of time that the transceiver is transmitting and/or not transmitting has changed.

In attempting to respond previously to applicants' argument, the Examiner has focused on an alleged difference of an associated data rate relative to half duplex and full duplex, where the Examiner alleges full duplex communication is representative of a communication, which has a higher data rate than half duplex communication. Alternatively full duplex communication represents simultaneous two way communications via a pair of communication paths, with generally one communication path supporting the transmission of information, while a second communication path supports the reception of information. Half duplex supports transmission in both directions, but generally in only one direction at a time.

However the concept of full duplex is irrelevant, with respect to the claims, in so far as only one of the communication paths is directed to transmitting. The other communication path is directed to receiving. More to the point, there is no indication that the rate, while transmitting, has changed in any way. The fact that data may also be received simultaneously is not relevant to a claimed first data rate, while transmitting, and a higher (second) data rate, while transmitting. The Examiner has failed to identify where in the cited reference, the portion of either the half duplex or full duplex communication, which supports the transmission (and not the reception) of data, has changed its data rate, while transmitting, consistent with the context of the claims as provided in the present application.

Still further, relative to claim 37, in addition to failing to make known or obvious a data rate, while transmitting, which changes, the Examiner has additionally failed to identify in the cited reference, Vanatta et al., '044, the digital circuitry, that is interoperable with the control circuitry, to provide additional digital data processing support, which forms part of the claimed apparatus detachably coupled to the portable wireless communication device. The failure of the reference to provide for such a teaching is highlighted in FIG. 6 of the reference, where the electrical components 647 of the second modular unit 108 fail to provide for a suitable element, which corresponds to the claimed element.

For the above noted reasons, Vanatta et al., '044, fails to make known any of the alleged claims of the present application. The applicants would respectfully request that the Examiner's final decision rejecting the corresponding claims be overturned, and that the claims be permitted to proceed to allowance.

2. Whether claims 41-43 have been improperly rejected under 35 U.S.C. 102(e) as being anticipated by Baker et al. (US Patent No. 6,317,597).

Relative to Baker et al., '597, the same can not be said to make known claims 41-43 of the present application, in so far as the cited reference fails to make known or obvious "transmitting and receiving wireless communication data from a wireless communication device in a transceiver", which has the corresponding first and second data rates while transmitting where the second data rate while transmitting is higher than the first data rate while transmitting.

Baker et al., '597, provides for a modem pool capable of utilizing an alternative data format structure, which may be available in enhanced service areas. However, this relates to the format in to which the information stream is formatted, prior to being encoded for wireless communication, and does not reflect any change which affects the rate, while transmitting data via the wireless communication link. The enhanced communication mode described in Baker et al., '597, is more closely akin to a form of compression on a block of information, before the signal is converted to a wireless signal, and decompression of the block of information after the wireless communication is received and converted into a received signal. In other words, the additional modem or modems from the modem pool, do not alter the wireless transmission performance in a way, which affects the rate data is communicated via the wireless communication link. Presumably, Baker et al., '597, alternatively reduces the amount of wireless data that needs to be transmitted, but then wirelessly communicates it at the same data rate.

In at least one of the illustrated embodiments of the present application, the detachable apparatus, allows for more of the wireless data that is communicated to be communicated via the wireless communication link in the same amount of time, while transmitting. Because the teachings of Baker et al., '597, fail to make known or obvious a

change in rate at which wireless data is communicated via the transceiver, while transmitting, Baker et al., '597, fails to make known or obvious the claims of the present application.

As presently amended, the claims are allowable over the prior art of record for the reasons noted above. Reconsideration of the claims and allowance of the present application is respectfully requested.

VIIIC. ARGUMENTS -- REJECTIONS UNDER 35 U.S.C. § 103

The Federal Circuit has repeatedly emphasized that, with respect to obviousness, the standard for patentability is the statutory standard. The inquiry is whether the claimed subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. In this regard, see for example, Monarch Knitting Machinery Corp. v. Saulzer Maurat GMBH, 139 F.3d 877, 881, 45 USPQ2d 1977, 1981 (Fed. Cir. 1998).

3. Whether claims 39 has been improperly rejected under 35 U.S.C. 103(a) as being unpatentable over Vannatta et al. (US Patent No. 5,924,044) in view of Lee et al. (US Patent No. 5,873,045).

Relative to claim 39, which has been rejected under 35 U.S.C. 103(a) as being unpatentable over Vanatta et al. (US Patent No. 5,924,044), in view of Lee et al. (US Patent No. 5,873,045), the applicants note that the substantive rejection articulated by the Examiner relies upon Vanatta et al., '044, as the base reference, which as noted above fails to make known or obvious the corresponding independent claims 37, from which claim 39 depends, and therefore also fails to make known or obvious claim 39. To the extent that dependant claim 39 incorporates any further claim details, above and beyond the features articulated in independent claim 37, which is not made known or obvious, the additional details would only serve to further distinguish claim 39 from the references cited by the Examiner. Consequently, the dependent claims are similarly not made known or obvious, by the references cited by the Examiner.

In view of the above analysis, the applicants would assert, that the Examiner has failed to establish that any of the cited references either separately or in combination make

known or obvious any of the presently pending claims. The applicants would respectfully request that the Examiner's decision to finally reject the presently pending claims be overturned, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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IX APPENDIX OF CLAIMS

The following is the text of the claims involved in this appeal:

1-29. (canceled)

30. A cellular telephone comprising:

a battery detachably connectable to the cellular telephone to supply the cellular telephone with power; and

a remote power source detachably connectable to the cellular telephone, wherein the cellular telephone is adapted to sense when the remote power source is coupled to the cellular telephone, the cellular telephone to alter a cellular telephone capability responsive to sensing the remote power source coupled to the cellular telephone, whereby the cellular telephone, which communicates data at the first data rate, while transmitting, over an air interface independently of the remote power source, is capable of communicating at a higher data rate, while transmitting, only while the remote power source is coupled.

31. The cellular telephone as in claim 30 wherein the battery is operational to deliver a first predetermined voltage level to the cellular telephone, the remote power source operational to deliver a second predetermined voltage level to the cellular telephone, the second predetermined voltage level greater than the first predetermined voltage level.

32. The cellular telephone as in claim 30 wherein the cellular telephone is configured to transmit at a higher average transmit power when the cellular telephone is coupled to the remote power source.

33-36. (canceled)

37. A communication assembly, comprising:

a portable wireless communication device including a transceiver for communicating data over a wireless communication link and control circuitry coupled to the transceiver, the control circuitry providing digital data processing to the transceiver, the control circuitry providing digital data processing to the transceiver sufficient to enable the transceiver to communicate data via the wireless communication link at a first data rate, while transmitting; and

an apparatus detachably coupled to the portable wireless communication device, the apparatus including digital circuitry to couple to the control circuitry via a data bus, the digital circuitry interoperable with the control circuitry to provide additional digital data processing support for the control circuitry via the data bus when the apparatus is coupled to the portable wireless device, whereby the digital circuitry operates with the control circuitry to provide digital data processing to the transceiver sufficient to enable the transceiver to communicate data via the wireless communication link at a second data rate, while transmitting, when the apparatus is connected to the communication device, the second data rate being higher than the first data rate.

38. The communication assembly as defined in claim 37, wherein the control circuitry

comprises a first microprocessor.

39. The communication assembly as defined in claim 37, wherein the digital circuitry comprises a second microprocessor, the data bus connected between the first and second microprocessors when the apparatus is coupled to the wireless communication device.

40. The communication assembly as defined in claim 37, wherein the apparatus further includes a power source to couple to the communication device, the power source providing additional power when the apparatus is coupled to the wireless communication device.

41. A method of controlling a transceiver in a portable wireless communication device, the method comprising the steps of:

transmitting and receiving wireless communication data from a wireless communication device in a transceiver;

data processing information for transmission and reception via the transceiver in a first processing circuitry in the wireless communication device when an external apparatus is not connected to the wireless communication device, the first processing circuitry enabling wireless data communication via the transceiver at a first data rate, while transmitting; and

cooperative data processing in both the first processing circuitry and a second processing circuitry in an external apparatus information for transmission and reception via the transceiver when the external apparatus including the second processing circuitry is coupled to the communication device, the co-processing enabling wireless data communication via the

transceiver at a second data rate, while transmitting, that is higher than the first data rate.

42. The method as defined in claim 41, wherein said step of cooperative processing comprises sharing in the first processing circuitry and the second processing circuitry at least one of coding and decoding of the signals communicated on the communication link when the external apparatus is coupled to the wireless communication device.

43. The method as defined in claim 41, wherein said step of cooperative processing comprises the first processing circuitry providing internet protocol information to the second digital processing circuitry, and the second processing circuitry processing at least one of digital images and web content.

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